

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD YORK and DEPARTMENT OF JUSTICE,
PENITENTIARY, Lompoc, CA

*Docket No. 98-1162; Submitted on the Record;
Issued November 3, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has greater than a four percent permanent impairment of the right lower extremity, for which he received a schedule award.

On April 17, 1996 appellant, a unit manager, sustained an injury while in the performance of his duties when he twisted his right leg and injured his knee. The Office of Workers' Compensation Programs accepted his claim for internal derangement of the right knee and approved arthroscopic surgery. Appellant filed a claim for a schedule award.

The Office referred appellant to Dr. Michael D. Gill, appellant's attending orthopedic surgeon, for an evaluation of permanent impairment. On January 6, 1997 Dr. Gill reported that appellant had mild to moderate anterior knee discomfort with kneeling and squatting, that he had aching at the end of the workday and could not kneel or squat. His findings included flexion to 140 degrees and extension to 0. With respect to whether appellant had any evidence of post-traumatic irregularity or arthritis, Dr. Gill reported that appellant had Grade III degenerative changes at the patellofemoral joint.

An Office medical consultant reviewed Dr. Gill's findings and determined that appellant had a four percent permanent impairment of the right lower extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1995). The medical consultant obtained this estimate by grading the severity of pain at 60 percent or "pain that may interfere with activity," and multiplying this percentage by the maximum impairment value of the femoral nerve or 7 percent, for an impairment of 4.2 percent, which he rounded to 4.

On May 16, 1997 the Office issued a schedule award for a four percent permanent impairment of the right lower extremity.

Appellant requested an examination of the written record. He stated that he was seeking additional compensation because it appeared that his knee limitation was going to be permanent.

In a decision dated September 15, 1997, an Office hearing representative affirmed the May 16, 1997 schedule award.

Appellant requested reconsideration and submitted a November 24, 1997 report from Dr. Gill, who related complaints and findings and stated that appellant's symptoms were most likely related to the chondral injury in the patellofemoral joint.

In a decision dated December 19, 1997, the Office denied a merit review of appellant's claim on the grounds that appellant's argument was immaterial and that Dr. Gill's report was cumulative.

The Board finds that this case is not in posture for a determination of whether appellant has greater than a four percent permanent impairment of the right lower extremity.

The Office medical consultant based his estimate of appellant's impairment solely on appellant's complaint of pain.¹ Citing no tables or figures in the A.M.A., *Guides*, he appeared to follow the grading scheme and procedure at Table 11, page 48, for determining impairment due to pain or sensory deficit resulting from peripheral nerve disorders. He did not make clear how this was applicable to appellant's case as he made no reference to clinical findings or other medical evidence indicating that appellant had a peripheral nerve disorder or injury. The Office medical consultant also did not make clear the basis for his grading of appellant's pain. The Office medical consultant selected Grade III, or "decreased sensibility with or without abnormal sensation or pain, which may interfere with activity." Dr. Gill's January 6, 1997 report indicated, however, that appellant could not kneel or squat, bringing into consideration the more severe grades of pain that are characterized by preventing activity. Further, the Office medical consultant identified the femoral nerve as the nerve innervating the area of involvement but did not support this with any clinical findings and with no reference to the dermatome chart on Figure 59, page 93. He indicated that the maximum impairment value of the femoral nerve was 7 percent, which, according to Table 68, page 89, is the maximum impairment value for dysesthesia. The consultant did not make clear that this is what he intended.

Apart from the uncertainties surrounding the impairment estimate for peripheral nerve disorders, there is no mention in the Office medical consultant's report of Dr. Gill's finding of Grade III degenerative changes in the patellofemoral joint. The Board notes that Dr. Gill has related appellant's patellofemoral joint arthropathy to the employment incident of April 17, 1996. Whether this arthropathy is employment related and contributes to the permanent impairment of appellant's right lower extremity is not clear from the record.²

The Board will set aside the Office's decisions and remand the case for further development of the medical evidence to clarify the evaluation of appellant's permanent impairment according to the protocols of the A.M.A., *Guides*, with clear references to tables,

¹ Table 41, page 78, of the A.M.A., *Guides* indicates that flexion to 140 degrees and extension to 0 degrees represents no impairment due to loss of range of motion.

² Table 62, page 83, of the A.M.A., *Guides* provides arthritis impairments based on roentgenographically determined cartilage intervals.

figures and pages and with reference to applicable clinical findings in the medical record. After such further development as may be necessary, the Office will issue an appropriate final decision on appellant's entitlement to schedule compensation.

The December 19, September 15 and May 16, 1997 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
November 3, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member